

# SPONSOR'S REBUTTAL TO FISCAL NOTE

**Bill Number:** SB 403 amendment

**Date Prepared:** March 21, 2011

**Short Title:** Generally revise K-12 school funding

**Sponsor:** Jones, Lew

**Fiscal Note Version and Date:**

**Generally, why do you disagree with the fiscal note?**

SB403 amendments address the technical issues presented in the fiscal note.

**Specifically, what in the fiscal note do you feel is flawed?**

*[Describe specific assumptions, calculations, technical issues, etc.]*

Technical Concerns in SB 403 Fiscal Note	How Addressed by Amendments
<b>Office of Public Instruction (OPI)</b>	
1. Section 2(4) requires school districts to make its school and district profiles publicly available, but does not provide a due date. School districts may not be able to meet this requirement "upon passage and approval," as provided in Section 53.	Section 2(4) is amended to set the due date as June 30, 2012.
2. Section 4(1) states the pathway to improvement payment "must be used" for specific purposes, such as rewarding successful schools and staff, to provide bonuses, and other incentives. In (2), it states, "Full flexibility dollars may be spent in any lawful manner authorized for a general fund expenditure." The pathway to improvement payment will not be tracked separately in the general fund.	The Pathway to Excellence payment will not be tracked separately in the school district general fund.
3. Section (4)(2) determines a school district's flexibility to apply the pathway to improvement payment based on OPI's certification on or before June 30, 2012. The pathway to improvement payment is paid to school districts beginning in FY 2012. It is unclear how a school district should spend the funds in FY 2012.	Schools will have full flexibility to spend the Pathway to Excellence payment in FY 2012.
4. Section (4)(6) allows a district to use \$250 per quality educator from "any budgeted fund" to pay for enhanced assessments and data collection to improve academic achievement. All budgeted fund expenditures, except for the	New subsection (7) has been added to prohibit a school district from using a permissive levy to replace monies that have been transferred.

*SB 403*

general fund, are restricted by law for a particular purpose, such as pupil transportation, replacing buses, tuition, retirement, debt service, adult education, building reserve, etc. Also, as proposed, a district could make the expenditure from the transportation fund, debt service fund, or adult education fund and permissively levy to replace the funds in subsequent years.	
5. In Section 7(3)(a), the total of the percentage distribution does not add up to 100% for Carbon, Dawson, Fergus, Hill, Liberty, Petroleum, Phillips, Pondera, Powder River, Prairie, Rosebud, Sheridan, and Wibaux counties.	All of these percentages now add up to 100%.
6. Section 11(1) requires a school district to estimate oil and gas revenue, but doesn't give direction on how the estimate is to be determined. Statutory reference should be to 20-9-141, MCA, not 20-9-131, MCA.	Section 11(1) has been amended to clarify that school districts must follow Section 11(7) to both budget and allocate revenues.
7. Section 11(2)(c) needs to be clarified to make it clear that if a school district's maximum or adopted budget is greater than \$1.25 million, the amount of oil and natural gas production taxes that a school district may retain is limited to \$1.25 million plus 50% of the remaining oil and natural gas production taxes received. However, the amount retained by the district may not exceed the greater of the school district's maximum or adopted budget.	Section 11(2) has been amended to make it clear that if a school district's maximum or adopted budget exceeds \$1.25 million, the district can only retain \$1.25 million plus an amount equal to one-half of the difference between the district's maximum or adopted budget and \$1.25 million.
8. In Section 11, once the OPI receives the adopted budget reports from school districts in the fall, OPI could calculate the maximum amount of oil and natural gas production taxes that each school district could retain and provide that information to DOR. The DOR could limit the distribution of oil and natural gas production taxes to the calculated amounts. This would avoid the unnecessary step of making the county treasurer remit the excess.	Section 11 has been amended to have DOR retain a school district's share of oil and natural gas production taxes once the district's allocation has reached the limit established in Section 11.
9. Section 11(7)(a) requires a school district to direct a portion of its oil and natural gas production taxes received in (2) to support the over-BASE portion of the district's general fund budget. Directing funds to support the over-BASE portion of the general fund budget is done during the budgeting process. In any fiscal year, the revenue received in (2) is received after the general fund budget for that year is already adopted. It would seem that the allocation required in (7) should refer to both the budgeting process and the allocation of revenues upon	Section 11(1) has been amended to clarify that school districts must follow Section 11(7) to both budget and allocate revenues.

receipt. That is, the amount received in (2) must be allocated, at a minimum, according to the estimated revenue on the general fund budget, and the remainder allocated to any fund, with the noted restriction on the amount that may be allocated to the flexibility fund.	
10. Section 11(8) requires the estimated oil and natural gas revenue to be adjusted downward by 10% in 2012, 2013, and 2014. It is unclear what the 10% amount is based on and where that information is to be used.	Section 11(8) has been deleted.
11. Section 14(1) states, "Money held in the (oil and natural gas reserve) fund may not be considered as fund balance for the purpose of reducing mill levies. In (4), the fund must be administered as a nonbudgeted fund, so the provision in (1) seems redundant. A nonbudgeted fund is administered under the provisions of 20-9-210, MCA.	The language in 14(1) has been deleted to remove the redundancy.
12. Section 15(1) limits ending fund balance of all budgeted and nonbudgeted funds to 300% of the maximum general fund budget. Nonbudgeted funds include the student activity fund; the self-insurance fund which is required by law to maintain a fund balance that is actuarially sound; the miscellaneous programs fund which accounts for federal, state and local grants; endowments and trusts; enterprise fund, etc.	Section 15(1) has been amended to include only budgeted funds so the limit does not count against the school lunch funds, federal funds, self-insurance funds, student activity funds and other funds that are not funded with property taxes.
13. Section 15 needs a language correction. "(2) The county superintendent shall, upon completion of a school fiscal year and a school district audit provided for in 20-9-203, redistribute any amounts in excess of the 300% limit among any other school districts in the same county whose budget combined ending fund balance has not exceeded the 300% limit."	Section 15 has been amended to refer to the 300% limit on the combined ending fund balances, not the budget.
14. A number of counties have only one school district or will have districts where all the districts are over the 300% limit. It is unclear how monies will be managed in those cases.	New language has been added to Section 15 to say that if no district in a county is under the 300% limit, the county will remit the excess funds to the state for deposit in the guarantee account.
15. Section 15(2) requires the county superintendent to make the distribution of excess funds upon completion of the school district financial audit. Federal audits are due by March 31 following the end of the fiscal year; non-federal audits are due by June 30 following the end of the fiscal year. In order to calculate and distribute the excess funds, the county superintendent would need the financial audits for all of the school districts in the county, which	The language requiring an audit has been deleted. The distributions will happen after fiscal year end based on the unaudited fund balances.

would be one year in arrears. A school district's excess funds could be gone (expended) by then.	
16. Section 15(2) assumes all school district funds are held at the county level. In 20-9-235, MCA, a school district may establish a direct investment account in which case the county superintendent would not have access to the funds. A school district would have to issue a warrant to the county for the payment required in (2).	Now that the 300% limit in Section 15 only applies to budgeted funds, this technical concern goes away. All budgeted funds are held at the county level.
17. Section 15(3) allows a school district to make the payment required in (2) from any fund or funds of the district. Budgeted funds are typically supported by a local tax levy. The levies supporting the debt service fund and building reserve fund are approved by the voters based on specific language in the ballot. There are separate statutes that restrict the expenditures from several budgeted and nonbudgeted funds.	Section 15 has been amended so that a school district cannot redistribute funds from its debt service fund, building reserve fund or bus depreciation fund.
18. Section 15(3) uses the term "excess reserves", which is currently referred to as a portion of ending fund balance that a school district may retain in the general fund in 20-9-104(3), MCA.	Instead of using the term "reserves," Section 15(3) now refers to combined ending fund balances, thus avoiding confusion with the concept of "excess reserves" defined in 20-9-104(3).
19. Section 19(5) would be clearer if it stated that any <u>general fund</u> balance reappropriated exceeding 15% of a school district's maximum general fund budget must be remitted to the state.	This change has been made to the bill.
20. Section 19(5) requires the excess reappropriated fund balance to be remitted to the "state," but does not clarify which state agency should receive the funds.	This has not been addressed. Need advice from the state accounting division.
21. In Section 20(1)(b)(iii), the requirement to anticipate oil and natural gas production taxes is stricken. However, in new Section 11(1), school districts are required to estimate oil and natural gas production taxes.	The requirement to anticipate oil and natural gas production taxes in the general fund budget has been added to Section 20(1)(d).
22. Section 22(11) pathway to improvement payment is paid similar to direct state aid. For a district that does not meet isolation status as provided in 20-9-302, MCA, it is unclear if the pathway to improvement payment would be paid at one-half, as provided in 20-9-303(1), MCA.	The Pathway to Excellence payment is now 100% state funded, so this concern is no longer relevant.
23. Section 30(4) limits the amount a school district may issue in oil and natural gas revenue	Section 30(4) has been amended to clarify that the amount of bonds that a school district may

bonds, based on oil and natural gas payments pursuant to 15-36-331(3), MCA. It is unclear if this limitation is subject to the provisions of new Section 11 which limits the amount of oil and natural gas production tax payments a school district may retain.	issue is limited by the oil and natural gas production taxes a district receives under Section 11.
24. Section 39(1), (2), and (3) allows for the funds securing the repayment of oil and natural gas revenue bonds to be deposited to the building fund. The oil and natural gas revenue bonds are secured by a first lien on the oil and natural gas production revenue received under 15-36-331(3), MCA, but the lien should be on the revenue retained under Section 11. Repayment of bond should be paid from the debt service fund.	Section 39 has been amended to say that the bonds will be repaid from the debt service fund.
25. Section 39 assumes the building fund money is always held with the county treasurer. However, a school district is allowed to establish a direct investment account in 20-9-235, MCA. Therefore, building fund money is not always held at the county level.	Now that the bill has been amended to require that bonds be repaid from the debt service fund, this concern goes away. The debt service fund is a budgeted fund and as such is held at the county level.
26. Section 41(1) states, "As used in 20-9-621 and 622, MCA, and this section, distributable revenue means . . . .". The term "distributable revenue" is not used in 20-9-621, MCA.	This technical concern is related to existing statute. The cleanup has been included in SB 403.
27. Section 43(5) requires OPI to calculate a school district's block grant in excess of 15% of the school district's maximum general fund budget and remit that amount to the state for deposit to the guarantee account. It is unclear if this section is referring to only the general fund block grant in (4)(a) or the block grants referred to in (4)(a), (b), and (c) collectively.	Section 43(5) has been amended to clarify that the 15% limit applies to the entire school block grant (general fund, transportation and combined block grant).
28. Section 49 allows a school district with excess general fund reserves as defined in 20-9-104, MCA, to transfer the excess amounts to any fund no later than June 30, 2011. School districts are unable to determine the amount that may be transferred by June 30, 2011. They do not have complete information about June revenues until they receive the county treasurer's reports, which under current law are not due to the district until July 10.	Section 49 has been deleted. This concept has been moved to Section 19(5)(a), which now allows a school district to transfer monies that the district does not anticipate it will need to fund the adopted FY 2011 general fund budget.
29. The repeal of the school facility and technology account should not be effective on passage and approval because there will still be activity in the account through the end of the fiscal year.	The LFD says that this section is OK as is.

30. Section 40 contains statutory appropriation in the guarantee account for the timber for technology payment of \$1.0 million, in both subsection 1 and subsection 2.	This still needs to be resolved. This technical amendment was added to the technical concerns by OBPP.
<b>Department of Commerce (DOC)</b>	
31. SB 403 and HB 15 contain conflicting provisions for the use of funds in the school facility and technology account. Passage of both bills would require a coordination provision.	Yes, SB 403 will need to be coordinated with HB 15.
<b>Department of Revenue (DOR)</b>	
32. The tax portion of the bill should have an applicability date tied to a date certain to ensure that: 1) the new distribution system does not come into effect mid-year; and 2) the DOR does <u>not</u> have two separate distribution requirements, one for prior years (i.e., audits), and one for current and future years. Typically, the revised distribution should be effective at the start of a particular fiscal year.	This still needs to be addressed.
<b>Board of Public Education (BPE)</b>	
33. The Pathway to Improvement Program as described in Section 3 requires the BPE to measure success through expanded performance measures in its accreditation standards based on data collection and assessment systems currently under development.	Yes.
34. Rules measuring expanded school performance must be across all grade proficiency and advanced performance levels requiring, yet to be developed, state of the art outcome measures.	Yes. There are policy decisions that need to be made.
35. This fiscal note only addresses the physical costs of adopting rules and not the substantive, deliberative and collaborative processes the BPE uses to ensure that all stake holders, including the legislature, have input. The ability to accomplish the expanded responsibilities would be compromised by any further reductions to its operating budget.	Yes.

**What is your estimate of the fiscal impact? See included fiscal items from LFD. Currently Pathways has not local property taxes so amounts are lower. Also OPI low performing schools amended to lowest 5%. The oil and gas formula was corrected to match the spreadsheets.**